In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1398

EDMOND VARNER LITTLEFIELD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner challenges the existence of probable cause for his arrest and the severity of his sentence.

Following a jury trial in the United States District Court for the Western District of Oklahoma, petitioner was found guilty of having committed armed robbery of a federally insured bank in violation of 18 U.S.C. 2113(a) and (d). He was sentenced to eighteen years' imprisonment. The court of appeals affirmed (Pet. App. A).

Petitioner's contention that the agents of the F.B.I. did not have probable cause to arrest him is fully answered in the opinion of the court of appeals, on which we rely (Pet. App. A, pp. 4-5). As the opinion points out, the agents knew at the time of arrest that the robber had fled from the bank in a yellow pickup truck, which was later found abandoned. Shortly after

the robbery, the driver of the pickup was seen stopped in the road talking with the driver of a 1970 red Chevrolet. Several local residents had noticed the Chevrolet in the vicinity of the robbery for several days prior to the robbery, and the license number had been noted. Agents of the F.B.I. had traced the license number and found that it was registered in the name of E. V. Littlefield, the petitioner. Petitioner was later stopped by the authorities while driving the Chevrolet and identified himself; he was then placed under arrest. These facts, as the court below held, established probable cause.

Petitioner's claim that he was penalized for exercising his right to trial because he received a more severe sentence than his co-defendant, who pleaded guilty, is wholly unsupported and rests solely on speculation. As the court below pointed out, the sentence was well within the statutory limit and thus is not reviewable in the absence of an affirmative showing that the exercise of sentencing discretion was illegal (Pet. App. A, p. 6).[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1973.

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[1] This Court recently denied certiorari in the case on which the court below relied in disposing of petitioner's sentencing contention, *United States* v. *Stidham*, 459 F. 2d 297 (C.A. 10), certiorari denied, 409 U.S. 868.